JUDICIAL COUNCIL OF THE TENTH CIRCUIT

IN RE: CHARGE OF JUDICIAL MISCONDUCT

Nos. 10-09-90038 through 10-09-90041

Before **HENRY**, Chief Judge.

ORDER

Complainant has filed a complaint of judicial misconduct against three circuit judges and one district judge in this circuit. My consideration of this complaint is governed by 1) the misconduct rules issued by the Judicial Conference of the United States, entitled Rules for Judicial-Conduct and Judicial-Disability Proceedings (the "Misconduct Rules"); 2) the federal statute dealing with judicial misconduct, 28 U.S.C. § 351 et seq., and 3) the "Breyer Report," a study by the Judicial Conduct and Disability Act Study Committee, headed by Supreme Court Justice Stephen Breyer, entitled Implementation of the Judicial Conduct and Disability Act of 1980. The Breyer Report may be found at: http://www.supremecourtus.gov/publicinfo/breyercommitteereport.pdf. To the extent that any relevant prior decisions of the full Judicial Council of this circuit consistent with those authorities exist, they may also govern my consideration of this complaint.

Complainant has received or has access to a copy of the Misconduct Rules. In accord with those rules, the names of the complainant and subject judges shall not be disclosed in this order. See Misconduct Rule 11(g)(2).

Complainant takes issue with factual findings and legal rulings made by the subject judges in complainant's underlying case and related appeal. To the extent that complainant challenges these rulings as legally or factually incorrect, the claims are not cognizable as misconduct because they are "directly related to the merits of a decision or procedural ruling." Misconduct Rule 11(c)(1)(B). As explained in the Breyer Report, this exclusion of matters related to the merits of underlying cases protects the independence of the judges deciding those cases. See Breyer Report, App. E., ¶ 2.

Complainant also contends that it is obvious from those rulings that the subject judges did not read or consider the arguments, factual statements, and legal authorities in the briefs complainant filed with the courts. This claim, essentially that the subject judges decided the case on improper grounds, is subject to dismissal because it is completely unsupported. The Misconduct Rules require complainants to support their allegations with "sufficient evidence to raise an inference that misconduct has occurred." *See* Misconduct Rule 11(c)(1)(D). Complainant's speculation that the judges' rulings must have resulted from a failure to read the pleadings is not evidence of misconduct.

Accordingly, this complaint is dismissed pursuant to Misconduct Rule 11(c). The Circuit Executive is directed to transmit this order to complainant and copies to the respondent judges and the Judicial Conference Committee on Judicial Conduct and Disability. See Misconduct Rule 11(g)(2). To seek review of this order, complainant must file a petition for review by the Judicial Council. The requirements for filing a petition for review are set out in Misconduct Rule 18(b). The petition must be filed with the Office of the Circuit Executive within 35 days of the date of the letter transmitting this order. Id.

So ordered this 1st day of August, 2009.

/s/ Robert H. Henry

Honorable Robert H. Henry Chief Circuit Judge